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July 19, 2017

Captain James Allen
California Highway Patrol
355 Convention Way
Redwood City, CA 94063

Re: Officer Involved Shooting of Luis Fernando Pacheco-Orozco

Dear Captain Allen:

The San Mateo County District Attorney's Office has concluded our investigation and review of the facts surrounding the death of Luis Fernando Pacheco-Orozco as a result of the use of lethal force by Officer Stephanie Combs, Officer Eric Lovejoy, and Officer Andrew Schillaci on April 28, 2017. It is my conclusion that the use of lethal force under the circumstances encountered by the officers on that date was justifiable pursuant to the provisions of California Penal Code Section 196.

The investigation conducted by the District Attorney's Office revealed the following: On April 28, 2017 at approximately 5:25 p.m., the California Highway Patrol received a 911 call from Mary Ybarra. Ms. Ybarra informed the dispatcher that she was involved in an accident on northbound Highway 101 at Highway 92, when she was rear-ended by a man, later identified as Luis Fernando Pacheco-Orozco, who was driving a black Toyota Tacoma, and wished for a police report to be taken. Minutes later, Ms. Ybarra called back and informed dispatch that the man who rear-ended her had pulled a firearm on her and took her truck. While she was on the phone with dispatch, Ms. Ybarra advised that the man was coming back toward her. Simultaneously, several other calls from citizens came into dispatch informing them that there was a man with a gun on northbound Highway 101 near Highway 92.

Officer Stephanie Combs was the first officer on the scene. She briefly spoke with Ms. Ybarra who was walking on the shoulder of the freeway. Ms. Ybarra motioned toward the decedent and told Officer Combs that he had a gun. Officer Combs drove up closer to the decedent, who was standing alongside the rear of his vehicle, adjacent to the highway. She then sought cover behind her driver's door and called out to the decedent over her public address system (PA) to drop the gun. The decedent did not drop the gun, but rather held it in his right hand. Officer Combs heard

the sirens of the other officers approaching. She expressed her fear that the decedent would shoot at the officers as they arrived on the scene.

Officer Lovejoy pulled up behind, and to the left of Officer Combs' patrol vehicle, and took a position of cover with Officer Combs behind her driver's door. Officer Schillaci pulled up to the right rear of Officer Combs' patrol vehicle, and took cover behind her passenger door. A short time later, Officer Neumyer and Officer Ramos arrived at the scene. All officers observed that the defendant was holding the firearm in his right hand. He appeared, to the officers and civilian witnesses, to be agitated. With the gun in his right hand, he was gesturing with his left hand. He was constantly moving, and occasionally brought the firearm up towards his head. The officers expressed concern that he was going to shoot at them or possibly others on the very crowded freeway. The officers repeatedly issued commands for him to put the gun down, even attempting to issue commands in Spanish. Over sixty commands to put the gun down were issued by the officers on the scene. These commands were so loud and persistent that residents of the homes on the other side of the sound wall were able to hear the officers' commands. The officers could hear the decedent talking, but were unable to understand what he was saying. This standoff at gunpoint lasted for approximately five minutes. Although the officers discussed the possible use of a Taser, they concluded that they could not get close enough. Officer Lovejoy requested a less lethal shotgun to be brought to the scene.

The three officers had their firearms trained on the decedent. Officer Combs was armed with her 40 caliber Smith and Wesson pistol, and Officers Schillaci and Lovejoy were armed with their CHP issued patrol rifles. After approximately five minutes of yelling commands for him to drop the weapon, the decedent began to raise his firearm. He pointed it directly at the officers, and Officers Combs, Lovejoy and Schillaci discharged their weapons. A total of five rounds were discharged by the officers. The decedent immediately dropped to the ground. His firearm, a loaded .357 Ruger revolver was recovered from the scene. This incident was video-recorded by the camera mounted on Officer Combs' patrol vehicle.

A later examination of the decedent's firearm determined it to contain one expended round in, one live round, and four empty chambers. The hammer of the weapon was in the cocked position and ready to fire the live round. The firearm was functional and in good working order.

An autopsy was conducted on May 1, 2017 by Dr. Thomas Wayne Rogers, MD. Dr. Rogers determined that the cause of Mr. Pacheco's death was "multiple gunshot wounds." Dr. Rogers determined that the decedent had been shot once in the right shoulder with a corresponding exit wound on the back of his right shoulder. He also had two gunshot entrance wounds to his chest, with no corresponding exit wounds. These two gunshots to the chest were fatal. He also had a gunshot wound to his right thigh, which was "through and through".

Carlos Jiron, a Criminalist at the San Mateo County Crime Lab was able to compare the bullets recovered from Mr. Pacheco's chest cavity to the firearms used by Officer Combs, Officer Lovejoy and Officer Schillaci. Mr. Jiron was able to determine that the shots to the decedent's chest were fired by Officer Schillaci.

At the time of death, Mr. Pacheco had a .20% blood alcohol content. Blood testing also revealed that he had .13 milligrams per liter of methamphetamine, and .04 milligrams per liter of amphetamine in his blood.

Following the shooting, Mary Ybarra was interviewed by Inspector Rick Decker of the San Mateo County District Attorney's Office. Ms. Ybarra described that she was driving her Ford F150 northbound on US Highway 101, passing the Hillsdale Boulevard exit when she started to move to the far right lane in preparation to merge onto eastbound Highway 92. She slowed down due to the very slow traffic ahead, and saw a black Toyota Tacoma approaching from behind at a high rate of speed. Ms. Ybarra immediately realized that the truck would not be able to stop in time, and she tried to take evasive action by turning her wheels toward the shoulder of the road. Despite her attempt to avoid a collision, the Toyota truck struck her from behind. The Toyota truck rolled to a stop in the #3 lane of northbound 101, two lanes west of Ms. Ybarra's vehicle. Ms. Ybarra then observed the driver, Mr. Pacheco, exit his vehicle and push it off the roadway onto the shoulder near Ms. Ybarra's truck. Ms. Ybarra made her first call to CHP at that time to report the collision.

Ms. Ybarra informed Inspector Decker that she challenged the driver as to why he was driving so fast, and told him that he'd better have insurance. She described his demeanor as "flustered" at that time, and that he kept apologizing to her in broken English. As they were standing near their vehicles, the driver suddenly pulled out a firearm in his right hand, pointed it directly at Ms. Ybarra and demanded her vehicle saying, "I need your truck." Ms. Ybarra responded by telling him to just take her truck. He went to his own truck and removed a backpack. He got into the driver's seat of her truck and allowed her to remove some personal belongings. Ms. Ybarra said that the driver continued to apologize and appeared "very desperate" at this point. As Ms. Ybarra walked away from her truck, she called her sister on her cell phone. The decedent exited the truck and asked her if she was calling the police. She assured him that she wasn't, and showed him the screen of her phone that displayed the word "Sis".

At that point, Mr. Pacheco got back into the driver's seat of her truck and started driving forward on the shoulder, merging into the lane of traffic. He drove toward the Highway 92 off-ramp, which was heavily congested with Friday commute hour traffic. He then pulled back onto the shoulder, put the truck in reverse and backed down the shoulder until he stopped in front of his own disabled truck. At this time, he walked toward Ms. Ybarra, telling her to "Come here." She refused to get closer to him, and continued to walk away from him, calling 911 a second time. As Ms. Ybarra was on the phone with the dispatcher, Officer Combs arrived on the scene. Ms. Ybarra told Officer Combs to be careful because the man had a gun. A motorist on Highway 101 offered Ms. Ybarra a safe place to sit in his vehicle. She estimated that about five minutes later, she heard gunshots.

Officers Combs, Lovejoy and Schillaci were interviewed by Inspectors from the San Mateo County District Attorney's Office in the early morning hours of the following day, April 29, 2017. The statements of the officers were corroborated by the video recording of the shooting. Each of them described how they responded to the scene, aware that the male had a firearm. Each of them recalled numerous commands being given for Mr. Pacheco to drop the weapon. All three of the officers described how he maintained the gun in his right hand while moving around. Finally, all

three officers described how the decedent raised the gun, pointing it directly towards them, provoking all three of them to fire, hoping to eliminate the threat before he fired upon them.

The investigation revealed that Mr. Pacheco had an extensive background for driving under the influence of alcohol. Had he been arrested by officers on this occasion for driving under the influence, it would have been a felony charge due to the number of prior convictions that he suffered within the past ten years. Additionally, Mr. Pacheco was on felony probation for being an accessory to a felony. Consequently, Mr. Pacheco's concern that Ms. Ybarra was calling the police, and his desperation to leave the scene were well founded. The legal consequences that he would have faced had he been apprehended would explain his conduct, and the observations of Ms. Ybarra that he appeared to be "desperate".

Throughout the investigation into this matter, Officers Combs, Lovejoy and Schillaci, as well as all of the other personnel from the California Highway Patrol cooperated fully with our office, including interviews by District Attorney Inspectors Raffaelli, Suzuki and Decker. As a result of our investigation and review of all of the evidence, including the autopsy and statements from percipient witnesses, it is the conclusion of this office that the use of lethal force by Officers Combs, Lovejoy and Schillaci on April 28, 2017, which resulted in the death of Luis Fernando Orozco-Pacheco, was justifiable under the provisions of Penal Code Section 196.

The officers exercised their police powers in a lawful manner against a person who produced a firearm and raised it toward officers. Confronted by a subject who was armed, public safety required responding officers to use deadly force to protect themselves and others in the immediate vicinity, including the many motorists on the crowded freeway. Once the decedent pointed his firearm in a manner that caused Officers Combs, Lovejoy and Schillaci to fear for the safety of themselves and the lives of those around them, they had no other reasonable choice than to utilize deadly force. They had exhausted all other options to de-escalate the situation. The officers are to be commended for their patience and persistence in unceasingly trying to convince Mr. Pacheco to drop his weapon, firing only when it appeared that he was about to discharge his firearm at them, and firing only the number of shots necessary to eliminate the immediate threat that the decedent posed. Additionally, the training in which the officers engaged prior to the afternoon in question enabled them to protect themselves and each other, while not needlessly endangering the well-being of the many motorists on the freeway.

As is the practice of the District Attorney's Office in reviewing the use of deadly force by police officers, our complete investigative report, excluding material which is legally required to be kept confidential, will be made available to the public after you have received this letter. If you have any questions regarding our investigation or our conclusions, please do not hesitate to call us.

Very truly yours,


STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY

Cc: Officer Stephanie Combs
Officer Eric Lovejoy
Officer Andrew Schillaci